

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 03-0306P
Tax Administration—Penalty
Tax Administration—Interest
For the Years 1998-2000**

NOTICE: Under Ind. Code § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Tax Administration—Penalty

Authority: 45 IAC 15-11-2

Taxpayer protests the 10% negligence penalty.

II. Tax Administration—Interest

Authority: IC § 6-8.1-10-1; 45 IAC 15-11-1

Taxpayer protests the interest amount levied upon the base use tax owed to the Department.

STATEMENT OF FACTS

The penalty was proposed in the first instance because the auditor determined taxpayer had not reported any of his gross retail sales for the Marion County Food and Beverage Tax. Taxpayer argued in his protest letter that he had collected the tax, but did not know where to send it. Taxpayer submitted no evidence showing he had made a good-faith effort to determine where to send the collected tax.

Taxpayer is a retail vendor with a booth at the Indiana State Fair during the audit years at issue.

I. Tax Administration-Penalty

DISCUSSION

Penalty assessments depend on a number of factors outlined in the regulation cited *supra*, and can be waived based on a showing of sufficient cause:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department finds the taxpayer did not act with reasonable care in that taxpayer did not report gross retail sales for the Marion County Food and Beverage Tax. Taxpayer did not remit the sales tax collected. Taxpayer admits he did not remit the collected tax; that admission is an admission of negligence. The Department denies taxpayer's request to abate the 10% penalty assessment.

FINDING

Taxpayer's request to abate the 10% negligence penalty is denied.

II. Tax Administration—Interest

DISCUSSION

Interest is imposed by the statute cited *supra*, and cannot be waived.

FINDING

Taxpayer's request to abate the interest assessment is denied.